

1 Honorable John H. Chun
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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8 KURT A. BENSHOOF, A.R.W. by and through
his father, KURT A. BENSHOOF, BRETT
FOUNTAIN, URVE MAGGITI,

9 Plaintiffs,
10 v.
11

12 ANDREA CHIN, ANTHONY BELGARD,
DONOVAN BROUSSARD, NATHAN CLIBER,
CATHERINE CORNWALL, GREGG CURTIS,
JANE DOE, JENNY DURKAN, JOHN DUUS,
NICHOLAS EVANS, PASCAL HERZER, RYAN
ELLIS, MICHAEL FOX, TYLER GOSLIN,
JULIE KLINE, ERNEST JENSEN, JONATHAN
KIEHN, SPENCER KURZ, MAGALIE
LERMAN, RICHARD LIMA, ADAM
LOSLEBEN, YVES LUC, SARAH
MACDONALD, JACOB MASTERSON, GRANT
MAYER, STEVEN MITCHELL, JOHNATHAN
MUSSEAU, BREHON NESS, LILLYA
NESTERUK, STEPHEN OKRUHLICA,
KATRINA OUTLAND, JESSICA OWEN,
SARAH PENDLETON, DWAYNE PIRAK,
BRIAN REES, BLAIR RUSS, JULIE SALLE,
DANIEL SCHILLING, TY SELFRIDGE,
NATHAN SHOPAY, STEVEN STONE,
MICHAEL TRACY, MELANIE TRATNIK,
SARAH TURNER, TREVOR TYLER,
MICHAEL VIRGILIO, ANDREW WEST, CHAD
ZENTNER, in their individual capacities, CITY
OF SEATTLE, KING COUNTY,
23 Defendants.

No. 2:24-cv-00808-JHC

DEFENDANTS CORNWALL,
HERZER, SALLE, AND KING
COUNTY'S OPPOSITION TO
BRETT FOUNTAIN'S MOTION FOR
JUDICIAL NOTICE OF FACTS

NOTED ON MOTION CALENDAR:
March 31, 2025

DEFENDANTS KING COUNTY, CORNWALL, HERZER,
AND SALLE'S OPPOSITION TO BRETT FOUNTAIN'S
MOTION FOR JUDICIAL NOTICE OF FACTS - 1
2:24-cv-00808-JHC

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants King County, Catherine Cornwall, Pascal Herzer, and Julie Salle (“Defendants”)
 3 file this opposition to Brett Fountain’s Motion for Judicial Notice of Facts (Dkt #87). Brett Fountain’s
 4 requested facts are improper for judicial notice under Federal Rules of Evidence 201(b). Defendants
 5 respectfully request that this Court deny Brett Fountain’s motion for judicial notice of facts.

6 **II. FACTUAL BACKGROUND**

7 Plaintiff Kurt Benshoof filed his original complaint on behalf of himself and his son, A.R.W.,
 8 against six defendants. Dkt. #1. In his First Amended Complaint (“FAC”), Mr. Benshoof added two
 9 new plaintiffs, Brett Fountain and Urve Maggitti, who were alleged to be his assistants of counsel,
 10 and increased the total number of defendants to 50. Dkt. #69. According to the FAC, Brett Fountain
 11 is a resident of Texas who attempted to help Mr. Benshoof filed court documents beginning in July
 12 of 2024. Dkt. #69 at p.9, 123. The propriety of Mr. Fountain and Ms. Maggitti as additional plaintiffs
 13 in this lawsuit is in dispute, and is a legal issue raised in defendants Cliber and Russ’s Motion to
 14 Dismiss, filed on March 17, 2025. Dkt. #90 at p.8.

15 On March 10, 2025, Mr. Fountain filed the motion for judicial notice of facts in which he
 16 asked this Court to take judicial notice of the following facts per Federal Rules of Evidence 201(b),
 17 and to instruct the jury to accept the noticed facts as conclusive per Federal Rules of Evidence
 18 201(f):

- 19 1. Fact: I am one of the plaintiffs in this case.
 20 2. Fact: Magalie Lerman is one of the defendants in this case.
 21 3. Fact: Jessica Owen is one of the defendants in this case.
 22 4. As a co-plaintiff, I am not only authorized to serve defendants with the summons
 and complaint, but also I share in the responsibility to perform such service. Fed.
 R. Civ. Proc. 4(c)(1).

23 “The plaintiff is responsible for having the summons and complaint served
 ... and must furnish the necessary copies to the person who makes service.”

1 5. Defendants Magalie Lerman and Jessica Owen have both been so served. See
 2 attached proofs of service on Lerman (Exhibit A) and Owen (Exhibit B).

3 Dkt. #87.

4 **III. ARGUMENT**

5 Under Rule 201 of the Federal Rules of Evidence, a court may take judicial notice of facts
 6 that are “not subject to reasonable dispute” because they either are (1) generally known within the
 7 trial court’s territorial jurisdiction, or (2) can be accurately and readily determine from sources whose
 8 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). “[A] high degree of indisputability
 9 is the essential prerequisite’ to taking judicial notice of adjudicative facts and ... ‘the tradition [of
 10 taking judicial notice] has been one of caution in requiring that the matter be beyond reasonable
 11 controversy.’ ‘Because the effect of judicial notice is to deprive a party of an opportunity to use
 12 rebuttal evidence, cross-examination, and argument to attack contrary evidence, caution must be used
 13 in determining that a fact is beyond controversy under Rule 201(b).’” *Rivera v. Philip Morris, Inc.*,
 14 395 F.3d 1142, 1151 (9th Cir. 2005).

15 Examples of facts that courts may take judicial notice include scientific principles,
 16 authoritative treatises, the court’s own record, official government documents, maps, published
 17 compilations, and geographic and historical facts...etc. See 2 Handbook of Fed. Evid. § 201:3 (9th
 18 ed.).

19 The facts proffered in Mr. Fountain’s motion are not matters appropriate for judicial notice.
 20 The facts in question are not matters generally known throughout the Western District of Washington,
 21 nor are they facts that can be determined from a source whose accuracy cannot reasonably be
 22 questioned. See e.g. *Holland v. King County Adult Detention*, 2013 WL 1192763 (W.D. Wash. March
 23 22, 2013) (declining to take judicial notice of letters presented by the plaintiff because the letters are

1 declarations not proper subjects for judicial notice). On the contrary, defendants Cliber and Russ have
2 filed a pending motion to dismiss in which they raised the question of whether Brett Fountain is a
3 proper plaintiff and whether Lerman and Owen are proper defendants in this lawsuit.

4 **IV. CONCLUSION**

5 The facts proffered in Brett Fountain's motion for judicial notice of facts are not appropriate
6 for judicial notice and the Court should therefore deny Mr. Fountain's motion.

7
8 I certify that this memorandum contains 701 words, in compliance with the Local Civil Rules.

9 DATED this 25th day of March 2025.

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11 LEESA MANION (she/her)
Prosecuting Attorney

12 By: s/Peggy Wu
Peggy Wu, WSBA #35941

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16 Phone: (206) 477-1120
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17 Attorney for King County, Catherine Cornwall,
Pascal Herzer, and Julie Salle

CERTIFICATE OF FILING AND SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on March 25, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF electronic filing system and sent the same to the following:

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1 DATED this 25th day of March 2025.
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3 s/Katie Wilson
4 Katie Wilson, Paralegal
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DEFENDANTS KING COUNTY, CORNWALL, HERZER,
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